



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CR-4921-2025

Date of Decision: 30.07.2025

Ajmer Lal through his Attorney Chaman Lal

...Petitioner

Versus

Jaswinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Sudesh Sahi, Advocate, for the petitioner.

VIKAS SURI, J.

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting the order dated 04.01.2025 (Annexure P-6) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short 'CPC') for setting aside the *ex parte* judgment and decree dated 13.11.2018 passed by the learned Rent Controller, Ludhiana, along with an application under Section 144 CPC for restoration of possession of the demised premises, has been allowed.

2. Briefly stated, the parents of the petitioner, namely Swaran Dass and Naseeb Kaur, were real owners of the property bearing No.XXXII-348/2, Opposite Punjab Agro, Neta Ji Nagar, Salem Tabri, Ludhiana. On their demise, the aforesaid property was inherited by the petitioner and his siblings and was jointly used by them having a common passage. The property in question, i.e. shop No.7, forms part of the



aforesaid joint property. However, a dispute arose between the petitioner and his siblings regarding the whole property including this shop in question. Thereafter, on 22.05.2017, the whole property was partitioned between them and shop Nos.7 and 8, along with a residential portion, which is just behind the said shops, has fallen to the share of the petitioner.

2.1 The respondent was inducted as tenant by the petitioner through Chaman Lal, in the year 2011, on monthly rent of Rs.5,000/- besides electricity charge and house tax. The respondent-tenant had been paying rent to the petitioner through Chaman Lal till December, 2011 but thereafter, he stopped paying rent for the shop in question. It has also been pleaded that since January, 2012, the respondent-tenant has stopped running his business in the shop in question and the same is lying closed. The petitioner filed a rent petition on the grounds of personal necessity and non-payment of rent.

2.2 Thereafter, the learned Rent Controller passed an *ex parte* eviction order dated 13.11.2018 in favour of the petitioner. In execution proceedings, possession of the demised premises was taken by the petitioner through the process of Court on 21.02.2019 and the execution application has been disposed of vide order dated 20.05.2019.

2.3 Thereafter, the respondent-tenant filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* order dated 13.11.2018 passed by the learned Rent Controller, along with an application under Section 144 CPC for restoration of possession of the demised premises. Upon notice, the said application was contested by filing a reply and from



the pleadings of the parties, the following issues were framed:-

- “1. Whether the ex parte judgment and decree dated 13.11.2018 is liable to be set aside? OPA
2. Whether the application is not maintainable? OPR
3. Relief”

2.4 On consideration of the evidence led by the parties and the rival contentions advanced, both the applications under Order 9 Rule 13 as well as under Section 144 CPC were allowed vide order dated 04.01.2025. The possession of the respondent-tenant over the shop in question has been ordered to be restored within two months. Aggrieved by the aforesaid order dated 04.01.2025, the petitioner has challenged the same by way of the present petition.

3. Learned counsel for the petitioner has submitted that the grounds for seeking the eviction of the respondent-tenant were personal necessity and non-payment of rent. It is further submitted that due notice was issued to the respondent-tenant and thereafter, publication was also made in the news-paper. It is only after service having been effected by way of publication, that the *ex parte* judgment dated 13.11.2018 came to be passed. Learned counsel for the petitioner has further submitted that the respondent-tenant intentionally failed to appear and contest the said rent petition and was proceeded against *ex parte*. It is further submitted that through the process of Court, the petitioner has already taken the possession of the demised premises, and as the property in question is required for personal necessity, restoration of possession ought not to have been ordered.



4. Heard learned counsel for the petitioner and with his able assistance perused the record.

5. Admittedly, the respondent was a tenant and in occupation of the demised premises. The Rent Controller, after discussing the evidence adduced by the parties and examining the provisions contained in Order 9 Rule 13 CPC, observed as under:-

“19) As per abovesaid provision, if the applicant satisfied the Court that the summons were not duly served then the Court shall make an order setting aside the decree against him upon such terms as cost or payment into the Court or otherwise as it thinks fit. Original file called and perused, wherein summons were sent to the applicant/original respondent on 05.04.2018 (inadvertently it was mentioned as 11.04.2018 on summons) for 30.04.2018, which were received back unserved with report locked. Further, respondent examined RW-1 Sandeep Kumar, Process Server, also admitted that he had visited the spot alongwith summons Ex. RW1/A and the shop/property in question was locked. Further during cross examination, RW-1 has admitted that he visited the shop one time only. Further he also admitted that there is no where mentioned in his report that he affixed the copy of summons as well as copy of the petition on the property in question. He also admitted that he cannot tell the name of the person to whom he asked about Jaswinder Singh applicant/original respondent on the date of service of summons on 18.04.2018. From the report on the summons as well as from the examination of RW-1, it is clear that summons were never served nor affixed on the shop in question.

20) From the further perusal of the file reveals that when the summons issued to the applicant/original respondent received back with report locked, then



publication was ordered to be issued against the applicant/original respondent for 16.07.2018, which was issued in newspaper 'Nawa Zamanna' and the same was received back duly effected on 07.09.2018 and due to non appearance of applicant/original respondent, he was proceeded against ex parte on that day. Now, in order to prove that when the publication was issued, applicant was outside India, the applicant has placed on record copy of his passport Ex. A-103, which shows that he departed to Canada on 19.03.2018 from New Delhi and returned back on 18.02.2019. Present publication was issued in newspaper Nawa Zamanna and nothing has been brought on record by the respondent/original petitioner that the same newspaper was also circulated in Canada. Moreover in case titled as **Shri Shantaram Fatu Prabhu Desai Vs. Smt. Harsha Umesh Sardessai, 1998(3) BomCR730**, wherein similar situation was dealt and it was held that it is absolutely necessary for the plaintiff to take necessary steps to serve the defendant by registered post when he cannot be served through a bailiff of the Court and in addition he has to see that the copy of the summons is affixed on the outer door of the residential premises of the defendant when a person to whom the summons is addressed is not found at the premises of the registered address. The trial Court on going through the records has arrived at the finding, as already noted above, that the petitioners herein had neither taken steps for affixation of summons on the residential premises of the respondents nor for service of summons on the respondent by registered post. Indeed the fact that there was no attempt made by the petitioners either to serve the summons by registered post or to take steps for affixation of copy of the summons on the outer door of the residential premises of the respondents is not disputed. In this set of facts I do not find any case made out for interference in the impugned order wherein the trial Court in exercise of its discretion,



which has been judiciously exercised, has held that the summons in the main suit was not duly served on the respondents. The said rule clearly provides that the plaintiff shall endeavour to serve the defendants by registered post or by affixation or summons on the residential premises of the defendants when the normal service of summons by the bailiff to the person to whom the summons is directed cannot be made due to the absence of such person. Undisputedly in the instant case no such efforts were made by the petitioners and as such the service by publication under Order 5, Rule 20 cannot be a valid service.

21) Moreover, applicant/original respondent was also not in India at the time when the publication was issued, therefore, service through publication cannot be said to be duly served upon the applicant and therefore, exparte judgment dated 13.11.2018 is liable to be set aside.”

6. Learned counsel for the petitioner has not been able to show that the summons as well as copy of the petition, were affixed on the property in question by the Process Server when attempt was made to serve the respondent-tenant. Learned counsel does not dispute that the summons issued, returnable for 30.04.2018, were received back unserved with the report stating “locked premises”, and it is not the case of the petitioner that a copy of the summons or the petition was affixed on the demised premises. Thereafter, at the instant of the petitioner, the respondent-tenant was sought to be served by way of publication for 16.07.2018, which was published in Newspaper ‘Nawa Zamanna’.

7. Learned counsel for the petitioner has also not been able to



refer to any material showing that the respondent-tenant was not out of the country on the date of the supra publication. On the contrary, the Rent Controller has placed reliance upon a copy of the respondent-tenant's passport (Ex.A-103), showing that he had left for Canada on 19.03.2018 and returned on 18.02.2019. No material has been referred to even remotely suggest that the newspaper in which the publication was issued, was also in circulation in Canada. Thus, there is no material available on record to show that the respondent-tenant was duly served, and therefore, the *ex parte* judgment and decree dated 13.11.2018 was not liable to be set aside.

8. In the light of the aforesaid, no irregularity or perversity can be said to be in the impugned order dated 04.01.2025, whereby the application under Order 9 Rule 13 CPC has been accepted by the learned Rent Controller. Accordingly, as a natural consequence thereof, the prayer in the application for restoration of possession of the demised premises being granted, also does not warrant any interference.

9. In view of the above discussion, the present petition, being bereft of merit, is dismissed.

10. Pending application(s), if any, also stand disposed of.

(VIKAS SURI)
JUDGE

July 30, 2025

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No